

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION***

***COMPANY APPLICATION NO.54 OF 2016  
IN  
COMPANY APPEAL NO.18 OF 2015  
IN  
COMPANY PETITION NO.76 OF 2012***

Rajesh Gopalkrishna Uchil )  
Age 50 yrs., Occ. Business at : C-5, )  
Ankur CHS Ltd. Marol, )  
Andheri East, Mumbai – 400 059. ) .. Applicant

***IN THE MATTER BETWEEN***

Shri Deven Surinder Verma )  
Adult, Indian National and Director of )  
Respondent Company having his )  
permanent residence at 501, )  
Vastu Pooja, Old Pump House, )  
Rajmata Jijabai Road, )  
Andheri (E), Mumbai – 400 093 )  
and presently residing at 402, )  
Dosti Tulip Building, Dosti Acres, )  
SMD Road, Wadala (E) – 400 037. ) .. Appellant

Versus

1. Trikon Electronics Pvt. Ltd. )  
A company incorporated under the )  
Companies Act, 1956, having its )

registered office at 101, Sarvesh Appt.)  
 Off Bhawani Shankar Road, )  
 Near Kabutarkhana, )  
 Dadar (w), Mumbai – 400 028. )

2. Rajesh Gopolkrishna Uchil )  
 Adult Indian National, resident of )  
 1001/2002, Indra Darshan Bldg.12, )  
 Shree Swami Samarth Nagar, )  
 Andheri (E), Mumbai – 400 053 )

3. Harish Gopalkrishna Uchil )  
 Adult Indian National, resident of )  
 901/902, Indra Darshan Bldg.12, )  
 Shree Swami Samarth Nagar, )  
 Andheri (E), Mumbai – 400 053 )

.. Respondents

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Mr.Shoeb Alam a/w Mr.Javed Shaikh i/by Mr.Abhijeet Joshi for the Applicant in the company application.

Mr.Mayur Shetty a/w Mr.Dikshat Mehra i/by M/s.Rajani Associates for the respondent/original appellant.

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**CORAM : R.D. DHANUKA, J.**

**DATE : 7<sup>th</sup> April 2017**

P.C. :

. By this application, the applicant (original respondent no.2 in Company Appeal No.18 of 2015) prays that this Court be pleased to conduct a preliminary inquiry under Section 340 of the Criminal Procedure Code, 1973 and to record a finding as to the commission of

the offences alleged in this company application and to make a complaint to the concerned Magistrate for initiating appropriate proceedings and for taking necessary action thereafter. Some of the relevant facts for the purpose of deciding this company application are as under :-

2. It is the case of the applicant that the original appellant and Mr.Harish G. Uchill are the directors in the respondent no.1-company. The applicant was alleged to have been illegally removed from the post of the director fraudulently and by falsely misusing the provision of Section 167(1)(b) of the Companies Act, 1956. The said Mr.Deven Verma, the original appellant approached the Company Law Board by filing a petition (76 of 2012) under Sections 397 and 398 of the Companies Act, 1956 for various reliefs. The applicant herein was a party to the said petition before the Company Law Board. By an order dated 20<sup>th</sup>/23<sup>rd</sup> January 2014, the Company Law Board disposed of the said proceedings. The appeal filed by the applicant was dismissed for want of prosecution. The original appellant also filed a Company Appeal (18 of 2015). This Court by an order dated 6<sup>th</sup> January 2016 disposed of the said Company Appeal No.18 of 2015 filed by the original appellant. This Court held that the company had suffered a loss that should be made good by the applicant and has set aside the observations made by the Company Law Board in paragraph 40 of its order.

3. It is the case of the applicant that in the said company appeal (18 of 2015), the original appellant had annexed a copy of the affidavit-in-reply dated 5<sup>th</sup> December 2012 purportedly filed by the applicant before the Company Law Board in the Company Petition No.76 of 2012. According to the applicant, the said copy of the said affidavit was not a

genuine copy of the affidavit-in-reply but was a forged, fraudulent and interpolated copy of the said affidavit.

4. Learned counsel appearing for the applicant invited my attention to paragraph 12 of the copy of the said purported affidavit-in-reply annexed by the appellant to the company appeal filed by the appellant. He submits that though in the said affidavit-in-reply filed by the applicant, who was the respondent no.2 before the Company Law Board, had averred that the respondent nos.2 and 3 have not benefited by pledging the shares held by the company in Aqua Logistics Ltd., in the copy of the affidavit-in-reply of the applicant (original respondent no.2) annexed to the company appeal filed by the original appellant, the word “not” was fraudulently not included and thus the copy of the affidavit-in-reply filed by the original appellant was not a genuine copy of the affidavit-in-reply which was filed by the applicant before the Company Law Board but was a forged, fraudulent and interpolated copy of the said affidavit.

5. In support of this submission, learned counsel for the applicant invited my attention to the certified copy of the papers and proceedings in Company Appeal No.18 of 2015 which was filed by the original appellant and more particularly copy of the affidavit annexed by the original appellant to the company appeal. He submits that each and every page of annexures annexed to the said appeal memo was certified as true and correct copy by the learned advocate representing the original appellant. He also invited my attention to the order passed by this Court in the said Company Appeal (18 of 2015) dated 6<sup>th</sup> January 2016 and

more particularly paragraphs 12 to 16 and would submit that relying upon the said forged, fraudulent and interpolated copy of the said affidavit, this Court has granted substantial relief in favour of the original appellant in the said company appeal.

6. It is submitted by the learned counsel that the said copy of the affidavit which was interpolated by the original appellant was filed before this Court with a view to commit fraud upon this Court and for snatching the order in favour of the appellant. He submits that though the said order was passed by this Court as far back as on 6<sup>th</sup> January 2016, the appellant did not bring it to the notice of this Court the alleged mistake till the applicant filed these proceedings for conducting inquiry under Section 340 of the Criminal Procedure Code, 1973, in annexing a copy which was not identical to the copy of the affidavit-in-reply filed by the original appellant before the Company Law Board.

7. Learned counsel for the applicant placed reliance on Sections 192, 193, 196, 209, 463, 470 and 471 of the Indian Penal Code, 1860 and also Sections 195 (1)(b) and 340 of the Criminal Procedure Code, 1973 and would submit that since the appellant had deliberately and fraudulently filed such interpolated copy of the affidavit-in-reply knowingly well that it was not a genuine copy, the appellant has interfered with an administration of justice and has committed various offences under the aforesaid provisions. He submits that the original appellant is liable to be prosecuted for commission of an offence of fraud, forgery and fabrication and various other offences.

8. It is submitted that this Court thus be pleased to conduct an inquiry in the offences committed by the original appellant in respect of the copy of the affidavit purportedly filed before this Court which was given in evidence in the company appeal and shall record a finding to that effect and shall file a complaint before the concerned Magistrate of the first class having jurisdiction against the appellant for committing such offence under Section 340 of the Criminal Procedure Code, 1973.

9. It is submitted by the learned counsel for the applicant that the applicant has filed a separate company application inter alia praying for recall of the said order dated 6<sup>th</sup> January 2016 passed by this Court.

10. Learned counsel invited my attention to the affidavit-in-reply filed by the appellant in both the company applications defending its fraudulent action on the ground that an officer of this Court had raised various office objections including an objection that some of the pages of the copy of the said affidavit-in-reply were not legible and were required to be replaced by typed copy. He submits that there was no mistake and/or inadvertent error committed by the appellant in annexing an interpolated copy of the affidavit-in-reply but was a deliberate act on the part of the appellant with a view to commit a fraud upon this Court and to take benefit thereof. He submits that four pages out of the total pages of the said affidavit-in-reply were replaced by the original appellant in the said affidavit by typed copies.

11. Learned counsel for the original appellant and the respondent in the company application, on the other hand, submits that an officer of this Court had raised various objections in the company

appeal filed by his clients. He submits that several pages of the said affidavit-in-reply which were annexed by the appellant were not legible and thus the appellant was directed to replace those pages by legible good copies. He submits that with a view to remove such office objections, the original appellant was required to replace those pages by typed copies of few pages including page no.124. He submits that however, while replacing the original page 124, in the 3<sup>rd</sup> paragraph of page 124, after the word “the Respondent Nos.2 and 3 have,” the word “not” was inadvertently not typed. He submits that though the said order was passed by this Court granting various reliefs to the appellant as far back as on 6<sup>th</sup> January 2016, the applicant did not file any such application for recall of the said order till December 2016. He submits that the said error crept in the copy of the affidavit-in-reply annexed to the company application was an inadvertent error and was not with a view to commit any fraud, forgery or interpolated the contents of the said affidavit-in-reply as canvassed by the applicant.

12. It is submitted by the learned counsel for the original appellant that the order passed by this Court on 6<sup>th</sup> January 2016 granting reliefs in favour of the original appellant was not only on the basis of the said paragraphs of the affidavit-in-reply filed by the applicant before the Company Law Board but was also on the basis of the other facts considered by this Court in the said order. He submits that in any event, his clients have no objection if the said order dated 6<sup>th</sup> January 2016 passed by this Court is recalled.

13. It is submitted by the learned counsel for the original appellant that the applicant has thus not made out any case for conducting

any inquiry under Section 340 of the Criminal Procedure Code, 1973 as prayed by the applicant.

14. By a separate order passed by this Court, in view of the consent given by the original appellant, this Court has recalled the order dated 6<sup>th</sup> January 2016 in the Company Application (L) No.24 of 2016.

15. A perusal of the record indicates that it is not in dispute that in the copy of the affidavit-in-reply annexed to the company application by the original appellant which affidavit was filed by the appellant before the Company Law Board, the word “not” was not typed. It is not the case of the original appellant that the copy of the affidavit-in-reply annexed to the company appeal was the true and correct copy of the said affidavit which was actually filed by the applicant before the Company Law Board. A perusal of the certified copy of the papers and proceedings in the Company Appeal No.18 of 2015 clearly indicates that each and every page of the annexures was certified as true and correct copy by the learned advocate representing the original appellant before this Court. It further indicates that some of the pages of the affidavit-in-reply were replaced by typed pages by the appellant.

16. A perusal of the order dated 6<sup>th</sup> January 2016 passed by this Court and in particular paragraphs 12 to 16 clearly indicates that this Court has set out the said paragraph 6.6 from the affidavit-in-reply in paragraph 12 of the said order and has held that it was the respondents' case that they were benefited by pledging the said shares held by the company in Aqua Logistics Ltd. The said alleged case of the applicant was reiterated in paragraph 16 also in the said order dated 6<sup>th</sup> January

2016. In view of this impression given to this Court by the said copy of the affidavit-in-reply annexed to the appeal paper book, this Court granted reliefs in favour of the original appellant. A perusal of the said order clearly indicates that the reliefs are granted in favour of the appellant substantially based on the said averments allegedly made by the applicant in the affidavit-in-reply filed by the Company Law Board.

17. Learned advocate representing the original appellant had certified each and every page of the annexures annexed to the appeal memo as true and correct copy. This Court accordingly proceeded on the premise that the respondent nos.2 and 3 were benefited by pledging the share held by the company in Aqua Logistics Ltd.

18. Learned counsel appearing for the original appellant does not dispute that this Court while granting relief to the appellant by an order dated 6th January 2016 in Company Appeal No.18 of 2015 had considered the said copy of the affidavit-in-reply which was annexed by the appellant to the company appeal filed by him and more particularly relevant page no.124 which was not exactly in accordance with the copy of such affidavit filed by the applicant before the Company Law Board. Learned counsel for the original appellant has agreed for recall of the said order dated 6th January 2016 passed by this Court. In my view, there is no substance in the submission of the learned counsel for the original appellant that the applicant ought to have brought this fact to the notice of this Court immediately.

19. The appellant was the beneficiary of the said order dated 6th January 2016 which admittedly contained part of such affidavit-in-reply

brought on record by the appellant which did not contain the word “not” at several places in the said order. It was the duty of the appellant to bring to the notice of this Court the so called alleged inadvertent error crept in the copy of the said affidavit-in-reply brought on record by the appellant immediately. In my view, no such benefit of doubt thus can be granted in favour of the appellant. In my prima facie view, there is thus substance in the submission made by the applicant that the word “not” was deliberately not typed with a fraudulent intention to get benefit of the said affidavit in the said Company Appeal No.18 of 2015.

20. Under Section 340 of the Criminal Procedure Code, 1973, the Court is empowered to order an inquiry into an offence referred to in Section 195(1)(b)(i) of the Criminal Procedure Code, 1973 if the same is committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court. Under Section 195(1)(b)(i) of the Criminal Procedure Code, 1973, no Court shall take cognizance of any offence punishable under Sections 193 to 196, 199, 200, 205 to 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court except on the complaint in writing of that Court or of some other Court to which such Court is subordinate.

21. Learned counsel for the applicant has invoked the provisions of Sections 192, 193, 196, 209, 463, 470 and 471 of the Indian Penal Code, 1860 in support of his submission that the original appellant had committed various offences under these provisions by committing fraud, fabrication, giving false evidence by interpolating the affidavit-in-reply.

22. A perusal of the order passed by this Court prima facie indicates that the original appellant was beneficiary of the order dated 6th January 2016 passed by this Court in view of this Court having considered the copy of the said interpolated affidavit-in-reply filed by the appellant before this Court. In my prima facie view, filing of the copy of such affidavit by the appellant before this Court by deleting the word “not” cannot be considered as an inadvertent error. An action on the part of the original appellant by prima facie deleting the word “not” in the affidavit-in-reply has interfered with an administration of justice. The appellant has produced an interpolated evidence before this Court for consideration which evidence is believed by this Court as true.

23. In my prima facie view, the appellant has committed violation of the aforesaid provisions of the Indian Penal Code, 1860 i.e. Sections 192 and 193 of the Indian Penal Code, 1860 relating to the document on record in the proceedings before this Court. The applicant has thus rightly invoked the provisions of Section 340 read with Section 195(1)(b)(i) of the Criminal Procedure Code, 1973. In my view, a case for filing complaint under Section 340 of the Code of Criminal Procedure, 1973 read with Section 195(1)(b)(i) for filing fabricated and interpolated affidavit is made out. After this preliminary inquiry, a need for investigation into alleged offenses under Section 195(1)(b)(i) of the Code of Criminal Procedure, 1973 is warranted to ascertain the correctness of the allegation of fraud, fabrication and interpolation of the affidavit which deserves to be inquired into by the competent judicial magistrate.

24. I therefore pass the following order :-

- (a) Learned Prothonotary and Senior Master of this Court is directed to draw and make an appropriate complaint before the competent Judicial Magistrate of first class having jurisdiction for the aforesaid offences prima facie committed by the original appellant in writing against the original appellant Mr.Deven Surinder Verma;
- (b) The original appellant Mr.Deven Surinder Verma shall file undertaking before this Court personally to appear before the trial Court in the said proceeding on the first date scheduled for his appearance by him and as per law. The said undertaking/bond to be executed by him for the said purpose in the sum of Rs.50,000/- shall be filed with the Prothonotary and Senior Master of this Court within three weeks from today and shall be sent to the concerned Court of Magistrate;
- (c) The trial Court to proceed further in the matter on its own merits and in accordance with law without being influenced by the observations made in the aforesaid order passed by this Court;
- (d) The original appellant Mr.Deven Surinder Verma shall comply with the said order passed by the competent Judicial Magistrate of the first class having jurisdiction as may be conveyed by the learned Prothonotary and Senior Master initially and thereafter by the Judicial Magistrate from time to time;
- (e) Company Application No.54 of 2016 is, accordingly, allowed in terms of prayer clause (a) and in terms of the aforesaid order;
- (f) There shall be no order as to costs.

***R.D. DHANUKA, J.***

